

Committee of its failure in writing, describing why the deadline was missed and when the required activities will be completed. In closing, and perhaps most importantly, SBA's failure to comply with these reporting requirements raises questions regarding the Agency's commitment to fulfilling its responsibilities under the Act, which was enacted by Congress to ensure that federal agencies treat small businesses fairly in rulemaking and enforcement activities.

Should you need additional information, please contact me or Suey Howe, the Committee's Regulatory Counsel, at 224-5175.

Sincerely,

CHRISTOPHER S. BOND,
Chairman.

U.S. SMALL BUSINESS ADMINISTRATION,
OFFICE OF GENERAL COUNSEL,

Washington, DC, March 31, 1999.

Hon. CHRISTOPHER S. BOND,
Chairman, Committee on Small Business, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I have been asked by Administrator Alvarez to respond to your letter of March 16, 1999, to provide you with my legal interpretation of the Small Business Regulatory Enforcement Act (SBREFA). The Small Business Administration (SBA) strongly supports SBREFA. As an Agency we are very sensitive to the problems that small businesses face in dealing with regulatory agencies that impose penalties for regulatory violations and force small businesses to comply with laws and regulations that require them to conduct their businesses in a certain way.

However, SBA is in a different category. All of our programs and activities are specifically designed to aid, counsel and protect small businesses. Unlike regulatory agencies that set policies with which small businesses must comply, SBA provides assistance and counseling. As you know, SBA reports annually, and in many cases more often, on its program activities and the assistance it provides. Therefore, SBA does not believe the SBREFA reports were required.

Rather than regulate small businesses, we provide small businesses access to capital indirectly by guaranteeing loans made by our lending resource partners. Through our Small Business Development Centers, we counsel and train small businesses to start or grow their businesses, often by providing them with information on SBA's programs. Also, SBA assists small businesses in obtaining government contracts through our procurement programs and through working with other Federal agencies to encourage them to contract with small businesses.

SBA is committed to ensuring that we meet both the spirit and dictates of SBREFA. We provide support to the National Ombudsman and the Regulatory Fairness Boards. As you know, the Office of the National Ombudsman is fully staffed and can draw on the resources of the Agency whenever necessary. After consulting with the National Ombudsman, we established a process to respond speedily and thoroughly to small business issues raised with the National Ombudsman.

In fact, we received special mention in the Ombudsman's Report filed with you on March 1, 1999, for our commitment to using high-level, independent staff to process SBREFA comments. Additionally, we are constantly developing new ways to reach as many small businesses as we can to tell them how to take advantage of our programs.

SBA is not a "regulatory" agency. It does not, except in very rare instances, impose penalties or conduct enforcement activities. In fact, there are only four instances in

which SBA can impose a monetary penalty. (The four instances are: SBA may impose a penalty on an SBIC for failure to cooperate in an examination or for providing books and records in poor condition; SBA may impose a penalty on an individual who wrongfully applies disaster loan proceeds; SBA may impose a penalty on an SBIC for every day that an SBIC fails to report pursuant to the Small Business Investment Act; SBA may impose penalties on a lender or a fiscal transfer agent in certain circumstances.) None of these four penalties are imposed against small businesses—two may be imposed on Small Business Investment Companies, one may be imposed on individuals receiving disaster loans, and one may be imposed on lenders or fiscal transfer agents. In no circumstance can SBA regulate, control or penalize a small business in the conduct of its enterprise.

However, SBA is covered by other sections of SBREFA and has been very responsive to the Regulatory Fairness Program (RegFair) developed by the National Ombudsman and Regional Fairness Boards. For example, we eagerly participate, as an Agency, not just through the Ombudsman's Office, in regional RegFair meetings.

While SBREFA only addresses enforcement proceedings, I would be remiss in not mentioning SBA's Office of Advocacy. The Office of Advocacy works with Federal agencies in developing regulations that address small business concerns. The Office of Advocacy helps ensure that agency policies are structured in such a way that agencies, using fair enforcement policies, can achieve their missions with the least possible burdens on small entities.

SBA strongly supports your efforts on behalf of small business and believes that, working together, we can provide a more positive atmosphere in which small businesses can flourish. I would be glad to meet with you or your staff to discuss this further.

Sincerely,

MICHAEL D. SCHATTMAN,
General Counsel.

Mr. BOND. For the Reg Flex and Red Tape Reduction Act to deliver the benefits intended by Congress, the agencies must comply with the law. It is that simple. Too many agencies, too many officials, unfortunately, in this administration seem to have the attitude that they are Olympians on the hill who know what is best for the peasants in the valley, when it really is the other way around. We should be listening to what the people who create the jobs and the economic well-being in our country, the small business sector, are saying.

Perhaps these plungers will help unclog things. But if sunshine and friendly persuasion will not work and if a plumber's friend cannot get it unclogged, it may be time to put civil penalties and fines in place so the agencies know we are serious. The job we are telling them to do is simple: Help small business, don't hurt it. If they will not do it, if the plumber's best friend won't help them, then we will change the law again and impose some penalties.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMAS. First of all, I have a couple of unanimous consent proposals.

AUTHORIZING THE USE OF THE EAST FRONT OF THE CAPITOL GROUNDS

Mr. THOMAS. Mr. President, I ask unanimous consent the Senate proceed to immediate consideration of H. Con. Res. 52, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 52), authorizing the use of the East Front of the Capitol Grounds for performances sponsored by the John F. Kennedy Center for the Performing Arts.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. THOMAS. I ask unanimous consent the resolution be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the resolution appear at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 52) was agreed to.

PERMITTING THE USE OF THE ROTUNDA OF THE CAPITOL FOR A CEREMONY IN HONOR OF THE FIFTIETH ANNIVERSARY OF THE NORTH ATLANTIC TREATY ORGANIZATION

Mr. THOMAS. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H. Con. Res. 81.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 81) permitting the use of the Rotunda of the Capitol for a ceremony in honor of the Fiftieth Anniversary of the North Atlantic Treaty Organization (NATO) and welcoming the three newest members of NATO, the Republic of Poland, the Republic of Hungary, and the Czech Republic, into NATO.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. THOMAS. I ask unanimous consent the resolution be agreed to and statements relating to the resolution appear in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 81) was agreed to.

Mr. THOMAS. Mr. President, I rise to introduce a bill called the No-Net-Loss of Private Lands Act. If I may have 10 minutes to do that, please.

THE PRESIDING OFFICER. The Senator from Wyoming is recognized.